..

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 13997 of 2005
Date of Decision : Sept. 11, 2006

Atma Plastics Private Limited etc.

... Petitioners

Versus

Debt Recovery Appellate Tribunal and others

.. Respondents

CORAM : Hon`ble Mr. Justice Jasbir Singh,
Hon`ble Mr. Justice Pritam Pal.

Present : Shri Anand Chibber, Advocate,
for the petitioners.

Shri I.P.Singh, Advocate,
and Shri Depinder Singh, Advocate,
for the respondent-Bank.

JASBIR SINGH, J. (Oral)

This writ petition has been filed with a prayer to quash order Annexure P/1, dated 26.8.2005, passed by respondent No.1 and also order dated 23.10.2003 (Annexure P/2) passed by respondent No.2.

It is not in dispute that after receiving loan, the petitioners failed to re-pay the same. Respondent No.4 filed an application before the Debt Recovery Tribunal at Jaipur. On 13.10.2000, following order was passed by the Tribunal :-

" In view of the judgment in Jaipur DRT Bar Association vs. Union

..

of India and others D.B. Civil Writ Petition No. 1837/2000 and order of Hon`ble Debts Recovery Appellate Tribunal, Mumbai dated 18.4.2000, the case stand transferred to Debts Recovery Tribunal, Chandigarh for further proceedings. All the counsels are directed to inform their parties to be present before Debts Recovery Tribunal, Chandigarh on 17.1.2001."

Thereafter, when the matter was put-up before the Debt Recovery Tribunal (hereinafter referred to as "the Tribunal") at Chandigarh on 17.1.2001, none of the parties came present. File of the case was also not received and only a list of cases fixed was received through Fax. The Tribunal adjourned the matter to 27.2.2001. No notice of the date fixed was sent to any of the parties. Thereafter, the matter was adjourned to 28.3.2001 and 19.4.2001. However, none put-up appearance on behalf of the petitioners, counsel for the bank was present on these dates.

On 11.5.2001, respondent No.2 ordered that the petitioners be proceeded ex-parte and ultimately, after adjourning the matter for few dates, an ex-parte decree was passed against the petitioner on 4.10.2001. On receipt of a notice, for recovery of the amount, from the Recovery Officer, the petitioners moved an application for setting-aside ex-parte decree, referred to above, passed against them. Their application was dismissed vide order Annexure P/2, on 23.10.2003. They also failed in appeal.

When the matter was fixed before the Tribunal at Jaipur, the petitioners were being represented by Shri V.K.Narang, Advocate. Shri Chibber states that during the proceedings before respondent No.1, Shri Narang had filed an affidavit that he was not present before the Tribunal at

..

Jaipur when the order was passed on 30.10.2000 and as such, there was no occasion for him, to inform the petitioners regarding the date fixed before the Tribunal at Chandigarh, i.e. 17.1.2001.

Without entering into the dispute, as to why the petitioners failed to appear before the D.R.T., this Court feels that as liability of the petitioners runs in crores of rupees, it would be in the interest of justice that they should be afforded an opportunity to present their case before the Tribunal. The huge liability has been fixed against them, without any hearing in an ex-parte manner. Rules and procedure are handmaid of justice to enhance the same and not to subvert it.

Their Lordships of the Supreme Court in ***Sardar Amarjit Singh Kalra (dead) by L.Rs. v. Parmod Gupta (Smt.) (dead) by L.Rs. and others*** (2003) 3 SCC 272, in paragraph 26 of the judgment had opined as under :-

> "Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."

View extracted above, was reiterated by their Lordships of Supreme Court in ***N.Balajit v. Virendra Singh and others*** (2004) 8 Supreme Court Cases 312, wherein after noting ratio of the judgment, referred to above, in para 10 of the judgment, it was observed that the procedure would not be used to discourage the substantial and effective

justice but would be so construed as to advance the cause of justice.

In view of the facts of this case and keeping in view the principles of natural justice and also to settle equities between the parties, it is ordered that in case, the petitioners deposit an amount of Rs.20.00 lacs, within one month from today, and also pay an amount of Rs. 50,000/- towards costs, to the bank, the orders under challenge shall be deemed to have been recalled. On depositing the amount by them, the Tribunal (D.R.T.) at Chandigarh shall provide two effective opportunities to the petitioners to argue the matter in dispute.

Parties are directed to appear before the D.R.T., Chandigarh on 26.10.2006. It is further made clear that in case the petitioners fail to deposit the amount, referred to above, this writ petition will be deemed to have been dismissed.

[JASBIR SINGH]
JUDGE

[PRITAM PAL]
JUDGE

Sept.11, 2006
som